80-5520

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. _____

William E. Conrad
2856 Dividend Park Dr.
Florissant, Missouri 60331

Appellant

V.

Peter W. Rodino, Jr.
United States House of
Representatives
Washington, D.C.

Appellee

V.

Thomas P. O'Neil, Jr.
United States House of
Representatives
Cannon H.O.B. Rm. 202
Washington, D.C.

Appellee

JURISDICTIONAL STATEMENT

~~PETITION FOR DIRECT APPEAL TO THE UNITED STATES SUPREME COURT TO REVIEW THE ORDER IN THIS CASE.~~

William E. Conrad

William E. Conrad
2856 Dividend Park Dr.
Florissant, Mo. 63031
Pro-se

Copy mailed to Defendants at addresses stated above.
Solicitor General, Dept. of Justice, Washington, D.C.

October 6, 1980

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Appellant William E. Conrad moves the Court for an order permitting him to proceed in this Court, in forma pauperis, with his appeal, writ of error, from the order entered in United States District Court for the District of Columbia entered on August 20,1980, pursuant to Rule 46 of this Court. Leave was granted by the above court to proceed in forma pauperis, and in support of attaches affidavit of said Appellant.

Affidavit of William E. Conrad

William E. Conrad, being duly sworn, deposes and says;

I am a citizen of the United States and plaintiff in the action.

I desire to prosecute an appeal from the Order entered without jurisdiction of the United States District Court for the District of Columbia, as a Writ of Error entered in this cause August 20, 1980, pursuant to T 28 U.S.C. 1915 and Act of March 3, 1891 C. 517 #5, #6, 26 Stat. 827,828. Because of my imposed poverty I am unable to pay the costs of such appeal or give security therfor and still be able to provide myself and my dependants with the necessities of life.

I am unable to obtain a certified copy of the record in the court below without payment of fees and costs.

I am entitled to the redress I seekby such appeal, writ of error, and such appeal presents substantial federal and constitutional questions.

I provide the sole means of support for my wife Jean, and for my two children Colleen and Steven.

I have no savings or bank account,own an automobile value approximately valued between $500.00 and $1,000.00.

Wherefore, affiant prays that he may have laeve to proceed in this court on appeal, writ of error in forma pauperis.

William E Conrad

William E. Conrad
2856 Dividend Park Dr.
Florissant, Mo. 63031

Subscribed and sworn to before me this 29 day of Sept, 1980

Bonita Meersheimer
Notary Public

My Commission expires May 4, 1982 County of St Louis Missouri

JURISDICTIONAL STATEMENT

1A 1. Has Act of Congress March 3, 1891 C. 517, #5, 6, 26 Stat 827, 828 been repealed?

2. Has Act of Congress September 24, 1789 C.29, 1 Stat. 73 been repealed?

3. Has Act of Congress April 9, 1866 Ch.31, 14 Stat 27 been repealed?

4. Can Congress of the United States pass Acts affecting Constitutional Rights, Vested Rights enunciated, or not, enumerated in the United States Constitution?

5. Are not the Federal Rules of Civil Procedure in conflict with the United States Constitution?

6. Is United States Code Title 28-1915 in conflict with due process clause provisions of United States Constitution?

7. Is Act of Congress June 25, 1948 C.646 62 Stat 869 new law, new enactment of new laws?

B. William E. Conrad vs. Peter W. Rodino, Jr., Thomas P. O'Neil, Jr. Case No. 80-2141

C. Act of September 24, 1789 A. 1
Act of April 9, 1866 A. 2
Act of March 3, 1891 A. 3
Act of June 25, 1948 A. 4

Abell v U.S., 518 F.2d. 1369, 1376
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Nichols v Schubert, 499 F.2d. 946
Railroad Co. v Linsay 4 Wall, 650, 656
Re Giannini Inc. 90 F.2d. 445
Roach v Mulingo, 16 Peters 319, 322
Shields v Coleman, 157 U.S. 168, 176-177
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Wartman v Branch 7 Civil D.Cty. Ct.
Milwaukee Cty, Wis. 510 F.2d. 130
Wayman v Southard, 23 U.S. 1, 13-15, 42-43

D. Motion for Leave to File in Forma Pauperis filed August 11, 1980 "Leave to file without prepayment of costs granted. Dismissed 28 USC 1915(d) See 79-0846, 79-3248, 80-1087 August 20, Judge Hart" (R.1

Motion for Leave to File for Notice of Appeal in forma pauperis filed September 9, 1980 "Denied. This Court has no authority to grant the relief requested. Hart 9/9/80."

United States District Court for the District of Columbia did not send Mesne report. (See R.2)

Notice of Appeal and Bill of Exceptions filed September 9, 1980. R.2

E. This is a proceeding for vindication of Federal Civil Rights and Right of access to the courts of the United States of America. This Court has jurisdiction and is mandated by Act of March 3, 1891 C.517 #5,6, 26 Stat 827,828 to accept direct appeal "In any case in which the jurisdiction of the Court is in issue; in such cases the question of the jurisdiction alone shall be certified to the Supreme Court from the Court below for decision. In any case that involves the construction or application of the Constitution of the United States. In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question." The Act has never been repealed and is submitted for judicial notice as legal evidence under United States Code Title 1-112.

(11) Order was entered August 20, 1980, Notice of Appeal filed September 9, 1980 (R.1,2)
United States District Court for the District of Columbia.

(111) Act of March 3, 1891 C.517 #5,#6 26 Stat. 827, 828
Lau Ow Bew 12 S.Ct. 517,519
Shield v Coleman 157 U.S. 168, 176-177
Smyth v Asphalt Belt Ry 267 U.S. 326, 327
Abell v U.S. 518 F.2d. 1369, 1376
In Re Bear River Drainage Dist. 267 F.2d. 849

F. Text in Appendix
Act of September 24, 1789 C. 29 1 Stat 73
Act of April 9, 1866 C. 31 14 Stat 27
Act of March 3, 1891 C.517 26 Stat 826
Act of June 25, 1948 C.646 62 Stat 569

G. Appellant submitted 3 seperate complaints to the United States District Court for the District of Columbia, which were illegally submitted to one judge instead of (3) three judges. (See local Rules) Each was delayed, abated from August 11, to August 20, 1980. The Court never applied Federal Rules of Civil Procedure 3, 4, 5. The judge under color of law interfered into the case and submitted his own evidence, after his own investigation, with or without defendants knowledge, quashed petitions and summons, which were never delivered in total violation of Constitutional Rights of Act of Congress September 24, 1789 C.29 1 Stat. 73, (Sections (8) oath of office, (9,12,15,17) trial by jury, (30) oral testimony, (32) No summons, process to be quashed, abated: Denied Due process of Law, (35) Parties to plead own cases personally.) which has never been repealed by the United States Congress. (act enclosed under USC T-112 as legal evidence)

[illegible] September 24, 1789 Ch 20 1 Stat 73 states "That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the Courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, "- - - - -.

The issues raised under the United States Constitution and the Federal Civil Rights Act of April 9, 1866 C. 31, 14 Stat 27 were never considered, never adjudicated, the Act of 1866, 9 April has never been repealed.

H. This Court derives Judicial power from the United States Constitution and from the Special Statutes made pursuant to it. This Court is bound by the Constitutional Oath of Office, the mandatory provisions of the Constitutional appellate judicial power and the mandatory, statutory provisions of an unrepealed Act of Congress March 3, 1891 C.517 #5, #6, 26 Stat. 827,828. Judge Hart under the color of law has submitted his own evidence in a cause where he is not a party, entered a judgment without Constitutional or statutory authority, the court never acquired jurisdiction over the parties, subject matter or to render a decision to suborn this appellants Constitutional Rights. The Federal Rules of Civil Procedure and U.S.C. T-28-1915 exercised under Act of June 25, 1948 C.646. 62 Stat. 869 are prohibited by the United States Constitution as Bills of Attainder.

Briefs on the merits and oral argument require plenary consideration as this appellant is the first United States Citizen to be punished by Bill of Attainder and Judicial Attainder with the imposition of punishment without trial by jury, or access to the courts of the United States for resolution of the Bill of Attainder and Judicial Attainder.

The first and formost duty of any federal court is to inquire into it's own constitutional exercise of jurisdiction, and under constitutional grant of jurisdictional power, must proceed and give judgment according as the right of the cause and the matter in law shall appear unto them, as the True Right of Due Process of Law.

BRIEF

1A 1. Has Act of Congress March 3, 1891 C. 517, #5, 6, 26 Stat 827, 828 been repealed?

2. Has Act of Congress September 24, 1789 C.29, 1 Stat. 73 been repealed?

3. Has Act of Congress April 9, 1866 Ch.31, 14 Stat 27 been repealed?

4. Can Congress of the United States pass Acts affecting Constitutional Rights, Vested Rights enunciated, or not, enumerated in the United States Constitution?

5. Are not the Federal Rules of Civil Procedure in conflict with the United States Constitution?

6. Is United States Code Title 28-1915 in conflict with due process clause provisions of United Sta tes Constitution?

7. Is Act of Congress June 25, 1948 C.646 62 Stat 869 new law, new enactment of new laws?

B. William E. Conrad vs. Peter W. Rodino, Jr., Thomas P. O'Neil, Jr. Case No. 80-2141

C. Act of September 24, 1789 A. 1
Act of April 9, 1866 A. 2
Act of March 3, 1891 A. 3
Act of June 25, 1948 A. 4

Abell v U.S., 518 F.2d. 1369, 1376
Dear v Rathje, 485 F.2d. 558, 560
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Re Giannini Inc. 90 F.2d. 445
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Shields v Coleman, 157 U.S. 168, 176-177
Sinwell v Shopp 536 F.2d. 15,18
Smyth v Asphalt Belt Ry 267 U.S. 326, 327
State ex rel Coonley v Hall
246 S.W. 35, 296 MO. 201
U.S. v Borden Co. 308 U.S. 188, 198 60 S.Ct. 182, 188
Wartman v Branch 7 Civil D. Cty. Ct.
Milwaukee Cty, Wis. 510 F.2d. 130
Wayman V Southard, 23 U.S. 1, 13-15, 42-43

D. Motion for Leave to File in Forma Pauperis filed August 11, 1980 "Leave to file without prepayment of costs granted." Dismissed 28 USC 1915(d) See 79-0846, 79-3240, 80-1087 August 20, Judge Hart")R.1

Motion for Leave to file for Notice of Appeal in forma pauperis filed September 9, 1980 "Denied. This court has no authority to grant the relief requested. Hart 9/9/80"

United States District Court for the District of Columbia did not send Mesne report. (See R.2)

Notice of Appeal and Bill of Exceptions filed September 9,1980. R.2

This is a proceeding for vindication of Federal Civil Rights and Right of Access to the Courts of the United States of America. This Court has jurisdiction and is mandated by Act of March 3, 1891 C. 517 #5,6, 26 Stat 827,828 to accept direct appeal "In any case in which the jurisdiction of the Court is in issue; in such cases the question of the jurisdiction alone shall be certified to the Supreme Court from the Court below for decision. In any case that involves the construction or application of the Constitution of the United States. In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under the authority, is drawn in question." The Act has never been repealed and is submitted for judicial notice as legal evidence under United States Code Title 1-112.

This direct appeal, Writ of Error is submitted within the (60) sixty day filing period.

F. (Text in Appendix)
Act of September 24, 1789 C. 29 1 Stat 73
Act of April 9, 1866 C.31 14 Stat 27
Act of March 3, 1891 C.517 26 Stat 826
Act of June 25, 1948 C.646 62 Stat. 869

G. Appellant filed complaint; summons and petition quashed and dismissed. When appeal is filed, it also is dismissed without going to the merits of the petition or to the merits of the appeal. The Federal Rules of Civil Procedure are not followed by the Federal Courts and Federal Judges. The United States Constitution is not followed by the Federal Courts and Federal Judges. (R. 1,2)
(See Act of September 24, 1789 C.29 1 Stat. 73 A.1)
(See Act of March 3, 1891 C. 517 26 Stat. 826 A.3)

Section 32 of Act of September 24, 1789 C.29 1 Stat 73 states "That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form,"- - - -. A.3 Act of March 3, 1891 C.517 #5,6, 26 Stat 827,

H. When a petition is filed in any federal court the summons and process cannot be quashed, abated, nor can the appeal be dismissed by the Supreme Court judges without going to the merits of the cause.

A.1. Act of September 24, 1789 C.29 1 Stat 73 #32, McVeigh v. U.S., 8 Wall 640, Railroad Co. v Lindsey, 4 Wall 650, 656, Roach v Mulingo, 16 Peters 319,322 1 Gallis C.C. R. 22.
A.3 Act of March 3, 1891 C.517 #5,6, 26 Stat 827,828, Lau Ow Bew v U.S. 12 S.Ct. 517,519, Shields v Coleman, 157 U.S. 168, 176-177 Smyth v Asphalt Belt Ry. 267 U.S. 326,327

and Supreme Court Rules are in conflict with the United States Constitution and Statutes at Large and must be declared void and unconstitutional.
Wayman v Southard, 23 U.S. 1, 13-15, 42-43, 10 Wheat 1.

Supreme Court is mandated to receive a direct appeal (Act of March 3, 1891) whenever a final judgment of the court below is void.
State ex rel Coonley v Hall, 246 S.W. 35, 296 Mo. 201. King v Riley, 498 S.W. 2d. 564,566.

Once judge has granted permission to proceed in forma pauperis the matter cannot be dismissed until summons and process has been served.
Wartman v Branch 7 Civil D. Cty. Ct. Milwaukee Cty, Wis. 510 F.2d. 130.
Nichols v Schubert, 499 F.2d. 946,. Sinwell v Shopp 536 F.2d. 15,18.
Dear v Rehje, 485 F.2d. 558,560.

Federal Rules of Civil Procedure of mandatory character, a judge has no discretion to dispense with it.
Re Giannini, Inc. 90 F.2d.445

Repeals of statutes by implication are not favored, and intention of Congress to repeal, modify or supercede must be clear and manifest.
in Re Bear River Drainage Dist. 267 F.2d. 849. Lau Ow Bew v. U.S. 12 S.Ct. 517,519. U.S. v. Borden Co., 308 U.S. 188,198 60 S.Ct. 128,188.

A.2 Act of April 9, 1866 C.31 14 Stat 29 provides civil vindication of Federal Civil Rights denied or withheld under the color of law. The Civil Rights Act only enunciates and enumerates the common law rights protected by the United States Constitution. Just as Act of September 24, 1789 C.29 1 Stat 73 enunciates and enumerates constitutional rights in Sections 8, oath of office, 9,12,15,17, trial by jury, 30, testimony and oral testimony, 32, no summons, process to be quashed, abated; Due process clause, 35, parties to plead clauses personally.

A.4 Act of June 25, 1948 C.646 62 Stat 869 must acceed to: Where there is a conflict between codification and Statutes at Large, Statutes at Large must prevail.
Abell v U.S. 518 F.2d. 1369, 1376.

Court rules cannot shift the burden of Proof, it is the courts duty to inquire of its jurisdiction.

U.S.C. T-1-112 requires submission to the Court of the Statute at Large still in effect, Judicial notice as legal evidence of Supreme Law of the Land, as a Special Statute made pursuant to the United States Constitution. A.6

J. I demand the whole case be brought before Supreme Court immediately for resolution according to the Constitution and Statutes made pursuant to it. I demand my Constitutional Right of Appeal, Oral argument to defend my Rights, and access to the courts of the United States.

CLERK'S OFFICE CO-217

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
WASHINGTON, D.C., 20001

August 21, 1980

William E. Conrad

vs. Civil Action No. 80-2141

Peter W. Rodino, Jr., et al.

Dear Mr. Conrad,

In the above-entitled cause, please be advised that on August 21, 1980, Judge Hart endorsed thereon as follows:

"Leave to file without prepayment of costs granted. Dismissed 28 USC 1915(d). See 79-0846, 79-3248, 80-1087

JAMES F. DAVEY, Clerk

By: _____
Deputy Clerk

(All correspondence and papers in connection with the case pending should bear the number referred to above.)

R 1

FOR THE DISTRICT OF COLUMBIA

WILLIAM E. CONRAD

VS

PETER W. RODINO, JR., et al.

No. 80-2141

FILED

SEP - 1 1980

JAMES F. DAVEY, Clerk

MOTION FOR LEAVE TO FILE NOTICE OF APPEAL IN FORMA PAUPERIS

William E. Conrad forma pauperis Plaintiff with supporting affidavit in Cause No. 80-2141 moves the Court for an order permitting him to file a Writ of Error, Appeal to the Supreme Court of the United States.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that William E. Conrad forma pauperis Plaintiff, hereby Appeals to the Supreme Court of the United States from the Final Order dismissing Complaint CA No. 80-2141. "Leave to file without prepayment of costs granted. Dismissed 28 USC 1915 (d). See 79-0846, 79-3248, 80-1087."

August 20, 1980 Judge Hart

This appeal is taken pursuant to Statute at Large of March 3, 1891 C 517 5, 6, 26 Stat 827, 828, Act of August 24, 1937 C.754 2, 50 Stat. 752, 755, 28 USC T-28-1252.

Bill of Exceptions, Assignment of Errors attached.

9/5/80
1/11/80
Denied. Pl. Court has no authority to grant the relief requested

FILED

SEP 9 1980

JAMES F. DAVEY, Clerk

William E. Conrad

2856 Dividend Park Dr.
Florissant, Mo.

I have this day September 3, 1980 mailed copy to defendants as address stated.

STATUTE I.
Sept. 24, 1789.

CHAP. XX.—*An Act to establish the Judicial Courts of the United States.*(a)

Supreme court to consist of a chief justice, and five associates.

Two sessions annually.

Precedence.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the supreme court of the United States shall consist of a chief justice and five associate justices,(b) any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

Thirteen districts.

Maine.

N. Hampshire.

Massachusetts.

Connecticut.

New York.

New Jersey.

Pennsylvania.

Delaware.

Maryland.

Virginia.

Kentucky.

South Carolina.

Georgia.

SEC. 2. *And be it further enacted*, That the United States shall be, and they hereby are divided into thirteen districts, to be limited and called as follows, to wit: one to consist of that part of the State of Massachusetts which lies easterly of the State of New Hampshire, and to be called Maine District; one to consist of the State of New Hampshire, and to be called New Hampshire District;(c) one to consist of the remaining part of the State of Massachusetts, and to be called Massachusetts district; one to consist of the State of Connecticut, and to be called Connecticut District; one to consist of the State of New York, and to be called New York District; one to consist of the State of New Jersey, and to be called New Jersey District; one to consist of the State of Pennsylvania, and to be called Pennsylvania District; one to consist of the State of Delaware, and to be called Delaware District; one to consist of the State of Maryland, and to be called Maryland District; one to consist of the State of Virginia, except that part called the District of Kentucky, and to be called Virginia District; one to consist of the remaining part of the State of Virginia, and to be called Kentucky District; one to consist of the State of South Carolina, and to be called South Carolina District; and one to consist of the State of Georgia, and to be called Georgia District.

A district court in each district.

SEC. 3. *And be it further enacted*, That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four

(a) The 3d article of the Constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only where the subject is submitted to it by a party who asserts his right in a form prescribed by law. It then becomes a case. Osborn et al. v. The Bank of the United States, 9 Wheat. 736; 6 Cond. Rep. 741.

(b) By the act of April 29, 1802, chap. 31, the Supreme Court was declared to consist of a Chief Justice and six associate Justices, and by the act of March 3, 1837, chap. 32, it was made to consist of a Chief Justice and eight associate Justices.

By the act of April 29, 1802, chap. 31, the provision of the act of September 24, 1789, requiring two annual sessions of the Supreme Court, was repealed, and the 2d section of that act required that the associate Justice of the fourth circuit should attend at Washington on the first Monday of August annually, to make all necessary rules and orders, touching suits and actions depending in the court. This section was repealed by the 7th section of the act of February 8th, 1839, chap. 36.

By an act passed May 4, 1826, chap. 37, the sessions of the Supreme Court were directed to commence on the second Monday in January annually, instead of the first Monday in February; and by an act passed June 17, 1844, the sessions of the Supreme Court were directed to commence on the first Monday in December annually.

(c) The jurisdiction and powers of the District Courts have been declared and established by the following acts of Congress: Act of September 24, 1789; act of June 5, 1794, sec. 6; act of May 10, 1800; act of December 31, 1814; act of April 16, 1816; act of April 20, 1818; act of May 15, 1820; act of March 3, 1823.

The decisions of the Courts of the United States on the jurisdiction of the District Courts have been: The Thomas Jefferson, 10 Wheat. 428; 6 Cond. Rep. 173. M'Donough v. Dannry, 3 Dall. 188; 1 Cond. Rep. 94. United States v. La Vengeance, 3 Dall. 297; 1 Cond. Rep. 132. Glass et al. v. The Betsey, 3 Dall. 6; 1 Cond. Rep. 10. The Alerta v. Blas Moran, 9 Cranch, 359; 3 Cond. Rep. 425. The Mamo et al., 2 Wheat. 391; 5 Cond. Rep. 623. The Josefa Segunda, 10 Wheat. 312; 6 Cond. Rep. 111. The Bolina, 1 Gallis' C. C. R. 75. The Robert Fulton, Paine's C. C. R. 620. Jansen v. The Vrow Christiana Magdalena, Bee's D. C. R. 11. Jennings v. Carson, 4 Cranch, 2; 2 Cond. Rep. 2. The Sarah, 8 Wheat. 391; 5 Cond. Rep. 472. Penhallow et al. v. Doane's Adm'rs, 3 Dall. 54; 1 Cond. Rep. 21. The United States v. Richard Peters, 3 Dall. 121; 1 Cond. Rep. 60. M'Lellan v. the United States,

A1

DEPARTMENT OF JUSTICE LIBRARY.

Supreme court adjourned by one or more justices; circuit courts adjourned.

SEC. 6. *And be it further enacted*, That the Supreme Court may, by any one or more of its justices being present, be adjourned from day to day until a quorum be convened; and that a circuit court may also be adjourned from day to day by any one of its judges, or if none are present, by the marshal of the district until a quorum be convened:(*a*) and that a district court, in case of the inability of the judge to attend at the commencement of a session, may by virtue of a written order from the said judge, directed to the marshal of the district, be adjourned by the said marshal to such day, antecedent to the next stated session of the said court, as in the said order shall be appointed; and in case of the death of the said judge, and his vacancy not being supplied, all process, pleadings and proceedings of what nature soever, pending before the said court, shall be continued of course until the next stated session after the appointment and acceptance of the office by his successor.

District courts adjourned.

The courts have power to appoint clerks.

SEC. 7. *And be it [further] enacted*, That the Supreme Court, and the district courts shall have power to appoint clerks for their respective courts,(*b*) and that the clerk for each district court shall be clerk also of the circuit court in such district, and each of the said clerks shall, before he enters upon the execution of his office, take the following oath or affirmation, to wit: "I, A. B., being appointed clerk of do solemnly swear, or affirm, that I will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God." Which words, so help me God, shall be omitted in all cases where an affirmation is admitted instead of an oath. And the said clerks shall also severally give bond, with sufficient sureties, (to be approved of by the Supreme and district courts respectively) to the United States, in the sum of two thousand dollars, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and determinations of the court of which he is clerk.

Their oath or affirmation.

Oath of justices of supreme court and judges of the district court.

SEC. 8. *And be it further enacted*, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: "I, A. B., do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God."

District courts exclusive jurisdiction.

SEC. 9. *And be it further enacted*, That the district courts(*c*) shall have, exclusively of the courts of the several States, cognizance of all crimes and offences that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the

---

By the act of March 10, 1838, the Justice of the Supreme Court is required to attend but one circuit in the districts of Indiana, Illinois, and Michigan.

By an act passed in 1844, the Justices of the Supreme Court are empowered to hold but one session of the Circuit Court in each district in their several circuits. The Judges of the District Courts hold the other sessions of the Circuit Court in their several districts.

(*a*) The provisions of law on the subject of the adjournments of the Supreme Court in addition to the 6th section of this act, are, that in case of epidemical disease, the court may be adjourned to some other place than the seat of government. Act of February 25, 1799.

(*b*) By the 24 section of the act entitled "an act in amendment of the acts respecting the judicial system of the United States," passed February 28, 1879, chap. 36, it is provided "that all the circuit courts of the United States shall have the appointment of their own clerks, and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court." *See ex parte* Duncan N. Hennen, 13 Peters, 230.

(*c*) The further legislation on the subject of the jurisdiction and powers of the District Courts are: the act of June 5, 1794, ch. 50, sec. 6; act of May 10, 1800, chap. 51, sec. 5; act of February 24, 1807, chap. 13; act of February 24, 1807, ch. 16; act of March 3, 1813; act of April 14, 1818, chap. 56, sec. 6; act of April 20, 1818, chap. 103; act of May 15, 1820, chap. 109, sec. 4; act of March 3, 1823, chap. 71.

high seas; where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas:(a) saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; and shall also have exclusive original cognizance of all seizures on land, or other waters than as aforesaid, made, and of all suits for penalties and forfeitures incurred, under the laws of the United States.(b) And shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.(c) And shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also have jurisdiction exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offences above the description aforesaid.(d) And the trial of issues in fact, in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury.

[Acts of June 5, 1794, sect. 6; act of Feb. 13, 1807; act of March 3, 1815, sect. 4.]

Original cognizance in maritime causes and of seizure under the laws of the United States.

Concurrent jurisdiction.

Trial of fact by jury.

Sec. 10. *And be it further enacted*, That the district court in Kentucky district shall, besides the jurisdiction aforesaid, have jurisdiction of all other causes, except of appeals and writs of error, hereinafter made cognizable in a circuit court, and shall proceed therein in the same

Kentucky district court. [Obsolete.]

(a) Jurisdiction of the District Courts in cases of admiralty seizures, under laws of impost, navigation and trade. M'Donough v. Dannry, 3 Dall. 188; 1 Cond. Rep. 94. The United States v. La Vengeance, 3 Dall. 297; 1 Cond. Rep. 132. Glass et al. v. The Betsey, 3 Dall. 6; 1 Cond. Rep. 10. The Alerta, 3 Cranch, 359; 3 Cond. Rep. 425. The Merino et al., 9 Wheat. 391; 5 Cond. Rep. 623. The Josefa Segunda, 10 Wheat. 312; 6 Cond. Rep. 111. Jennings v. Carson, 4 Cranch, 2; 2 Cond. Rep. 2. The Sarah, 8 Wheat. 691; 5 Cond. Rep. 472. Peshaltow et al. v. Deane's Admrs, 3 Dall. 54; 1 Cond. Rep. 21. United States v. Richard Peters, 3 Dall. 121; 1 Cond. Rep. 69. Hudson et al. v. Guestier, 6 Cranch, 281; 2 Cond. Rep. 374. Brown v. The United States, 8 Cranch, 110; 3 Cond. Rep. 56. The Sarah, 8 Wheat. 391; 5 Cond. Rep. 472. The Amiable Nancy, 3 Wheat. 546; 4 Cond. Rep. 322. Slocum v. Maybury, 2 Wheat. 1; 4 Cond. Rep. 1. Gelston et al. v. Hoyt, 3 Wheat. 246; 4 Cond. Rep. 244. The Bolina, 1 Gallis' C. C. R. 75. The Robert Fulton, 1 Paine's C. C. R. 620; Zee's D. C. R. 11. De Lovio v. Boit et al., 2 Gallis' C. C. R. 398. The Abby, 1 Mason's Rep. 360. The Little Ann, Paine's C. C. R. 40. Davis v. A New Brig, Gilpin's D. C. R. 472. The Catharine, 1 Adm. Decis. 104.

(b) An information against a vessel under the act of Congress of May 22, 1794, on account of an alleged exportation of arms, is a case of admiralty and maritime jurisdiction; and an appeal from the District to the Circuit Court, in such a case is sustainable. It is also a civil cause, and triable without the intervention of a jury, under the 9th section of the judicial act. The United States v. La Vengeance, 3 Dall. 297; 1 Cond. Rep. 132. The Sarah, 8 Wheat. 691; 5 Cond. Rep. 472. The Abby, 1 Mason, 360. The Little Ann, Paine's C. C. R. 40.

When the District and State courts have concurrent jurisdiction, the right to maintain the jurisdiction attaches to that tribunal which first exercises it, and obtains possession of the thing. The Robert Fulton, Paine's C. C. R. 620.

(c) Burke v. Trevitt, 1 Mason, 96. The courts of the United States have exclusive jurisdiction of all seizures made on land or water, for a breach of the laws of the United States, and any intervention of State authority, which by taking the thing seized out of the hands of the officer of the United States, might obstruct the exercise of this jurisdiction, is unlawful. Slocum v. Mayberry et al., 2 Wheat. 1; 4 Cond. Rep. 1.

(d) Davis v. Packard, 6 Peters, 41. As an abstract question, it is difficult to understand on what ground a State court can claim jurisdiction of civil suits against foreign consuls. By the Constitution, the judicial power of the United States extends to all cases affecting ambassadors, other public ministers and consuls; and the judiciary act of 1789 gives to the district courts of the United States, exclusively of the courts of the several States, jurisdiction of all suits against consuls and vice consuls, except for certain offences enumerated in this act. Davis v. Packard, 7 Peters, 276.

If a consul, being sued in a State court, omits to plead his privilege of exemption from the suit, and afterwards, on removing the judgment of the inferior court to a higher court by writ of error, claims the privilege, such an omission is not a waiver of the privilege. If this was to be viewed merely as a personal privilege, there might be grounds for such a conclusion. But it cannot be so considered; it is the privilege of the country or government which the consul represents. This is the light in which foreign ministers are considered by the law of nations; and our constitution and law seem to put consuls on the same footing in this respect. *Ibid.*

exclusive cognizance of all crimes and offences cognizable under the authority of the United States,(a) except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable therein. But no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court.(b) And no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ, nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favour of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange.(c) And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions herein after provided.(d)

Exclusive cognizance of crimes and offences cognizable under the laws of the United States.

No person to be arrested in one district for trial in another on any civil suit.

Limitation as to civil suits.

Actions on promissory notes.

Circuit courts shall also have appellate jurisdiction.

SEC. 12. *And be it further enacted*, That if a suit be commenced in any state court against an alien, or by a citizen of the state in which the suit is brought against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court; and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial into the next circuit court, to be held in the district where the suit is pending, or if in the district of Maine to the district court next to be holden therein, or if in Kentucky district to the district court next to be holden therein, and offer good and sufficient surety for his entering in such court, on the first day of its session, copies of said process against him, and also for his there appearing and entering special bail in the cause, if special bail was originally requisite therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause, and any bail that may have been originally taken shall be discharged, and the said copies being entered as aforesaid, in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process.(e) And any attach-

Matter in dispute above 500 dollars.

Removal of causes from state courts.

Special bail.

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to them, as that the parties are citizens of different States. Wood v. Wagnon, 2 Cranch, 9; 1 Cond. Rep. 335.

Where the parties to a suit are such as to give the federal courts jurisdiction, it is immaterial that they are administrators or executors, and that those they represent were citizens of the same State. Chapedelaine et al. v. Decheneaux, 4 Cranch. 306; 2 Cond. Rep. 116. Childress et al. v. Emory et al., 3 Wheat. 642; 5 Cond. Rep. 547. See also Brown v. Strode, 5 Cranch, 303; 2 Cond. Rep. 285. Bingham v. Cabot, 3 Dall. 382; 1 Cond. Rep. 170. Gracie v. Palmer, 8 Wheat. 699; 5 Cond. Rep. 561. Massie v. Watts, 6 Cranch, 148; 2 Cond. Rep. 322. See et al. v. Pitot et al., 6 Cranch, 332; 2 Cond. Rep. 389. Shute v. Davis, Peters' C. C. R. 431. Flanders v. The Ætna Ins. Com., 3 Mason, C. C. R. 158. Kitchen v. Sullivan et al., 4 Wash. C. C. R. 84. Briggs v. French, 2 Sumner's C. C. R. 252.

(a) The Circuit Courts of the United States have jurisdiction of a robbery committed on the high seas under the 8th section of the act of April 30, 1790, although such robbery could not, if committed on land, be punished with death. The United States v. Palmer et al., 3 Wheat. 610; 5 Cond. Rep. 252. See The United States v. Coolidge et al., 1 Gallis' C. C. R. 488, 495. The United States v. Coombe, 12 Peters, 72.

The Circuit Courts have no original jurisdiction in suits for penalties and forfeitures arising under the laws of the United States, but the District Courts have exclusive jurisdiction. Kedland v. The Cassius, 2 Dall. 365.

(b) The petitioner was arrested in Pennsylvania, by the marshal of the district of Pennsylvania, under an attachment from the Circuit Court of Rhode Island, for a contempt in not appearing in that court after a monition, served upon him in the State of Pennsylvania, to answer in a prize cause as to a certain bale of goods condemned to the captors, which had come into the possession of Peter Graham, the petitioner. Held, that the circuit and district courts of the United States cannot, either in suits at law or equity, send their process into another district, except where specially authorized so to do by some act of Congress. Ex parte Peter Graham, 3 Wash. C. C. R. 456.

(c) Bean v. Smith, 2 Mason's C. C. R. 252. Young v. Bryan, 6 Wheat. 146; 5 Cond. Rep. 44. Mollan v. Torrance, 9 Wheat. 537; 5 Cond. Rep. 666.

(d) Smith v. Jackson, Paine's C. C. R. 453.

(e) The Judge of a State Court to which an application is made for the removal of a cause into a court of the United States must exercise a legal discretion as to the right claimed to remove the cause;

Attachment of goods holden to final judgment.

ment of the goods or estate of the defendant by the original process, shall hold the goods or estate so attached, to answer the final judgment in the same manner as by the laws of such state they would have been holden to answer final judgment, had it been rendered by the court in which the suit commenced. And if in any action commenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court and make affidavit if they require it, that he claims and shall rely upon a right or title to the land, under a grant from a state other than that in which the suit is pending, and produce the original grant or an exemplification of it, except where the loss of public records shall put it out of his power, and shall move that the adverse party inform the court, whether he claims a right or title to the land under a grant from the state in which the suit is pending; the said adverse [party] shall give such information, or otherwise not be allowed to plead such grant, or give it in evidence upon the trial, and if he informs that he does claim under such grant, the party claiming under the grant first mentioned may then, on motion, remove the cause for trial to the next circuit court to be holden in such district, or if in the district of Maine, to the court next to be holden therein; or if in Kentucky district, to the district court next to be holden therein; but if he is the defendant, shall do it under the same regulations as in the beforementioned case of the removal of a cause into such court by an alien; and neither party removing the cause, shall be allowed to plead or give evidence of any other title than that by him stated as aforesaid, as the ground of his claim; and the trial of issues in fact in the circuit courts shall, in all suits, except those of equity, and of admiralty, and maritime jurisdiction, be by jury.(*a*)

Title of land where value exceeds 500 dollars.

If in Maine and Kentucky, where causes are removable. [Obsolete.]

Issues in fact by jury.

Supreme court exclusive jurisdiction.

Proceedings against public ministers.

SEC. 13. *And be it further enacted*, That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction.(*b*) And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul,

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the defendant being entitled to the right to remove the cause under the law of the United States, on the facts of the case, the judge of the State court could not legally prevent the removal; the application for the removal having been made in proper form, it was the duty of the State court to proceed no further in the cause. Gordon v. Longest, 16 Peters, 97.

One great object in the establishment of the courts of the United States, and regulating their jurisdiction, was to have a tribunal in each State presumed to be free from local influence, and to which all who were non-residents or aliens, might resort for legal redress; and this object would be defeated if a judge in the exercise of any other than a legal discretion, may deny to the party entitled to it, a removal of his cause. *Ibid.*

(*a*) The provisions of the laws of the United States relating to juries, and trials by jury are:—*Trial by jury*—act of September 24, 1789, chap. 20, sec. 10, sec. 12, sec. 15.—*Exemption from attending as jurors*—act of May 7, 1800, chap. 46, sec. 4. *Choice of jurors and qualification of jurors*—act of September 24, 1789, chap. 20, sec. 29; act of May 13, 1800; act of July 20, 1840; act of March 3, 1841, chap. 19. Expired as to juries in Pennsylvania. Special jury act of April 29, 1802, chap. 31, sec. 20. —*Jury in criminal cases*—act of September 24, 1789, chap. 20, sec. 29; act of April 20, 1790, chap. 9. *Manner of summoning jurors*—act of September 24, 1789, sec. 29; act of April 29, 1802, chap. 31. *Juryman de talibus*—act of September 24, 1789, chap. 20.

(*b*) As to cases in which States, or alleged States, are parties, the following cases are referred to: The Cherokee Nation v. The State of Georgia, 5 Peters, 1. New Jersey v. The State of New York, 5 Peters, 284. Ex parte Joan Madrazzo, 7 Peters, 627. The State of Rhode Island v. The State of Massachusetts, 12 Peters, 651. Cohens v. The State of Virginia, 6 Wheat. 264; 5 Cond. Rep. 90. New York v. Connecticut, 4 Dall. 3. Fowler v. Lindsay et al., 3 Dall. 411.

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7 Wheat. 164; 5 Cond.
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1 Cond. Rep. 480.
(*c*) Prohibition. Wh
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v. Judge Peters, 3 Dall.
(*d*) Mandamus. The
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Act of 1793, ch. 22; act of 1797, ch. 13; act of 1818, ch. 83; act of Feb. 1819; act of May 26, 1824, ch. 124.

by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

Limitation of writs of habeas corpus.

Parties shall produce books and writings.

SEC. 15. *And be it further enacted*, That all the said courts of the United States, shall have power in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively, on motion, to give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively on motion as aforesaid, to give judgment against him or her by default.(a)

Suits in equity limited.

SEC. 16. *And be it further enacted*, That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law.(b)

The act of Congress authorizing the writ of habeas corpus to be issued "for the purpose of inquiring into the cause of commitment," applies as well to cases of commitment under civil as those of criminal process. See Chief Justice Marshall, 2 Brockn. C. C. R. 447. Ex parte Gibert, 1 Wash. C. C. R. 232. United States v. French, 1 Gallis's C. C. R. 2. Holmes v. Jennison, Governor of the State of Vermont, 14 Peters, 540.

(a) It is sufficient for one party to suggest that the other is in possession of a paper, which he has, under the act of Congress, given him notice to produce at the trial, without offering other proof of the fact; and the party so called upon must discharge himself of the consequences of not producing it, by affidavit or other proof that he has it not in his power to produce it. Hylton v. Brown, 1 Wash. C. C. R. 298.

The court will not, upon a notice of the defendant to the plaintiff to produce a title paper to the land in dispute, which is merely to defeat the plaintiff's title, compel him to do so; unless the defendant first shows title to the land. Merely showing a right of possession is not sufficient to entitle him to the aid of a court of chancery, or of the Supreme Court, to compel a discovery of papers which are merely to defeat the plaintiff's title without strengthening the defendant's. It is sufficient, in order to enable him to call for papers to show the title to the land, although none is shown in the papers. *Ibid.*

Where one party in a cause wishes the production of papers supposed to be in the possession of the other, he must give notice to produce them: if not produced, he may give inferior evidence of their contents. But if it is his intention to nonsuit the plaintiff, or if the plaintiff requires the papers means to obtain a judgment by default, under the 15th section of the judicial act, he is bound to give the opposite party notice that he means to move the court for an order upon him to produce the papers, or on a failure so to do, to award a nonsuit or judgment, as the case may be. Bas v. Steele, 3 Wash. C. C. R. 381.

No advantage can be taken of the non-production of papers, unless ground is laid for presuming that the papers were, at the time notice was given, in the possession or power of the party to whom notice was given, and that they were pertinent to the issue. In either of the cases, the party to whom notice was given may be required to prove, by his own oath, that the papers are not in his possession or power; which oath may be met by contrary proof according to the rules of equity. *Ibid.*

To entitle the defendant to nonsuit the plaintiff for not obtaining papers which he was ordered to produce, the defendant must first obtain an order of the court, under a rule that they should be produced. But this order need not be absolute when moved for, but may be nisi, unless cause be shown at the trial. Dunnam v. Riley, 4 Wash. C. C. R. 126.

Notice to the opposite party to produce on the trial all letters in his possession, relating to monies received by him under the award of the commissioners under the Florida treaty, is sufficiently specific as they described their subject matter. If to such notice the party answer on oath that he has not a particular letter in his possession, and after diligent search could find none such, it is sufficient to prevent the ordering of secondary proof of its contents. The party cannot be asked or compelled to answer whether he ever had such a letter in his possession. Vasse v. Mifflin, 4 Wash. C. C. R. 519.

(b) The equity jurisdiction of the courts of the United States is independent of the local law of any State, and is the same in nature and extent as the equity jurisdiction of England from which it is derived. Therefore it is no objection to this jurisdiction, that there is a remedy under the local law. Gordon v. Hobart, 2 Sumner's C. C. R. 401.

If a case is cognizable at common law, the defendant has a right of trial by jury, and a suit upon it cannot be sustained in equity. Baker v. Biddle, 1 Baldwin's C. C. R. 405.

Courts may grant new trials.

Act of March 2, 1831, ch. 99.

Execution may be stayed on continuance.

Facts to appear on record.

Altered by act of March 3, 1803, chap. 40.

Costs not allowed unless 500 dollars recovered.

Appeals from the district to the circuit court where matter in dispute exceeds 300 dolls.

Sec. 17. *And be it further enacted*, That all the said courts of the United States shall have power to grant new trials, in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law;(a) and shall have power to impose and administer all necessary oaths or affirmations, and to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same;(b) and to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States.

Sec. 18. *And be it further enacted*, That when in a circuit court, judgment upon a verdict in a civil action shall be entered, execution may on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as they may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office of said court, a petition for a new trial. And if such petition be there filed within said term of forty-two days, with a certificate thereon from either of the judges of such court, that he allows the same to be filed, which certificate he may make or refuse at his discretion, execution shall of course be further stayed to the next session of said court.(c) And if a new trial be granted, the former judgment shall be thereby rendered void.

Sec. 19. *And be it further enacted*, That it shall be the duty of circuit courts, in causes in equity and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence or decree, fully to appear upon the record either from the pleadings and decree itself, or a state of the case agreed by the parties, or their counsel, or if they disagree by a stating of the case by the court.

Sec. 20. *And be it further enacted*, That where in a circuit court, a plaintiff in an action, originally brought there, or a petitioner in equity, other than the United States, recovers less than the sum or value of five hundred dollars, or a libellant, upon his own appeal, less than the sum or value of three hundred dollars, he shall not be allowed, but at the discretion of the court, may be adjudged to pay costs.

Sec. 21. *And be it further enacted*, That from final decrees in a district court in causes of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three hundred dollars, exclusive of costs, an appeal shall be allowed to the next circuit court,

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There cannot be concurrent jurisdiction at law and equity, where the right and remedy are the same; but equity may proceed in aid of the remedy at law, by incidental and auxiliary relief; if the remedy at law is complete. Its jurisdiction is special, limited and defined; not as in England, where it depends on usage. *Ibid.*

The 16th section of the judiciary law is a declaratory act settling the law as to cases of equity jurisdiction, in the nature of a proviso, limitation or exception to its exercise. If the plaintiff have a plain, adequate and complete remedy at law, the case is not a suit in equity, under the constitution, or the judiciary act. *Ibid.*

Though the rules and principles established in English Chancery at the revolution, are adopted in the federal courts, the changes introduced there since, are not followed here; especially in matters of jurisdiction, as to which the 16th section of the act of 1789 is imperative. *Ibid.*

(a) New trials. Calder v. Bull and Wife, 3 Dall. 386; 1 Cond. Rep. 172. Arnold v. Jones, Bee's Rep. 174.

(b) Contempt of court. The courts of the United States have no common law jurisdiction of crimes against the United States. But independent of statutes, the courts of the United States have power to fine for contempts, and imprison for contumacy, and to enforce obedience to their orders, &c. The United States v. Hudson et al., 7 Cranch, 32; 2 Cond. Rep. 403.

By an act passed March 2, 1831, chap. 99, it is enacted, that the power of the courts of the United States to punish for contempts shall not extend to any cases, except to misbehaviour in the presence of the court, or so near to the court as to obstruct the administration of justice, or the misbehaviour of the officers of the court in their official transactions, and disobedience or resistance by any officer of the court, party, juror, witness or any person to any writ, process, order or decree of the court. Indictments may be presented against persons impeding the proceedings of the court. &c. See the statute.

(c) Execution. The 14th section of the Judiciary act of September 24, 1789, chap. 20, authorizes the courts of the United States to issue writs of execution upon judgments which have been rendered. This section provides only for the issuing of the writ, and directs no mode of proceeding by the officer obeying its command. Bank of the United States v. Halstead, 10 Wheat. 51; 6 Cond. Rep. 22.

Powers of the executor or administrator of deceased marshals.

them; and the executor or administrator of the deceased marshal shall have like remedy for the defaults and misfeasances in office of such deputy or deputies during such interval, as they would be entitled to if the marshal had continued in life and in the exercise of his said office, until his successor was appointed, and sworn or affirmed: And every marshal or his deputy when removed from office, or when the term for which the marshal is appointed shall expire, shall have power notwithstanding to execute all such precepts as may be in their hands respectively at the time of such removal or expiration of office; and the marshal shall be held answerable for the delivery to his successor of all prisoners which may be in his custody at the time of his removal, or when the term for which he is appointed shall expire, and for that purpose may retain such prisoners in his custody until his successor shall be appointed and qualified as the law directs.(a)

Marshal's power after removal.

Trial of cases punishable with death to be had in county.

Sec. 29. *And be it further enacted*, That in cases punishable with death, the trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence.(b) And jurors in all cases to serve in the courts of the United States shall be designated by lot or otherwise in each State respectively according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the courts or marshals of the United States; and the jurors shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens, to serve in the highest courts of law of such State, and shall be returned as there shall be occasion for them, from such parts of the district from time to time as the court shall direct, so as shall be most favourable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of any part of the district with such services. And writs of *venire facias* when directed by the court shall issue from the clerk's office, and shall be served and returned by the marshal in his proper person, or by his deputy, or in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as the court shall specially appoint for that purpose, to whom they shall administer an oath or affirmation that he will truly and impartially serve and return such writ. And when from challenges or otherwise there shall not be a jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court where such defect of jurors shall happen, return jurymen *de talibus circumstantibus* sufficient to complete the pannel; and when the marshal or his deputy are disqualified as aforesaid, jurors may be returned by such disinterested person as the court shall appoint.

Jurors by lot. Act of May 13, 1800, ch. 61.

Writs of venire facias from clerk's office.

Juries de talibus, &c.

Mode of proof.

Act of April 29, 1802, ch. 31, § 25.

Depositions de bene esse.

Sec. 30. *And be it further enacted*, That the mode of proof by oral testimony and examination of witnesses in open court shall be the same in all the courts of the United States, as well in the trial of causes in equity and of admiralty and maritime jurisdiction, as of actions at common law. And when the testimony of any person shall be necessary in any civil cause depending in any district in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient or very infirm, the deposition of such person may be taken *de bene esse* before any justice or judge of any of the courts of the United States,

(a) If a debtor committed to the State jail under process of the courts of the United States escapes, the marshal is not liable. Randolph v. Donaldson, 9 Cranch, 76; 3 Cond. Rep. 280.

(b) The Circuit Courts of the United States are bound to try all crimes committed within the district, which are duly presented before it; but not to try them in the county where they have been committed. The United States v. Wilson and Porter, Baldwin's C. C. R. 78.

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or before any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States, not being of counsel or attorney to either of the parties, or interested in the event of the cause, provided that a notification from the magistrate before whom the deposition is to be taken to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served on the adverse party or his attorney as either may be nearest, if either is within one hundred miles of the place of such caption, allowing time for their attendance after notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel.(a) And in causes of admiralty and maritime jurisdiction, or other cases of seizure when a libel shall be filed, in which an adverse party is not named, and depositions of persons circumstanced as aforesaid shall be taken before a claim be put in, the like notification as aforesaid shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice if any given to the adverse party, be by him the said magistrate sealed up and directed to such court, and remain under his seal until opened in court.(b) And any person may be compelled to appear and depose as aforesaid in the same manner as to appear and testify in court. And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be appealed from, if either party shall suggest to and satisfy the court that probably it will not be in his power to produce the witnesses there testifying before the circuit court should an appeal be had, and shall move that their testimony be taken down in writing, it shall be so done by the clerk of the court.(c) And

Adverse party to be notified.

Notice in admiralty and maritime causes.

Agent notified.

Depositions retained.

Persons may be compelled to appear and testify.

Appeal allowed.

(a) The following cases have been decided relating to depositions taken under the provisions of this act: That the deponent is a seaman on board a gun-boat in the harbour, and liable to be ordered to some other place, and not to be able to attend the court at the time of sitting, is not a sufficient reason for taking his deposition under the act of September 24, 1789, chap. 20.

If it appear on the face of the deposition taken under the act of Congress, that the officer taking the same, was authorized by the act, it is sufficient in the first instance, without any proof that he was such officer. Ruggles v. Buckner, 1 Paine's C. C. R. 358.

Objections to the competency of the witness whose deposition is taken under the act of 1789, should be made at the time of taking the deposition, if the party attend, and the objections are known to him, in order that they may be removed: otherwise he will be presumed to waive them. United States v. Hair-pencils, 1 Paine's C. C. R. 400.

A deposition taken under the 30th section of the act of 1789 cannot be made on evidence, unless the judge before whom it was taken, certify that it was reduced to writing by himself, or by the witness in his presence. Penhone v. Derringer, 4 Wash. C. C. R. 215. *See* United States v. Smith, 4 Day, 121. North Carolina Cases, 81.

The authority given by the act of 1789, to take depositions of witnesses in the absence of the opposite party, is in derogation of the rules of common law, and has always been construed strictly; and therefore it is necessary to establish that all the requisites have been complied with, before such testimony can be admitted. Bell v. Morrison et al., 1 Peters, 351. The Patapsco Ins. Comp. v. Southgate, 5 Peters, 604. The United States v. Coolidge, 1 Gallis. C. C. R. 488. Evans v. Hettick, 3 Wash. C. C. R. 408. Thomas and Henry v. The United States, 1 Brockeh's C. C. R. 307.

The provisions of the 30th section of the act of 1789, as to taking depositions, de bene esse, does not apply to cases pending in the Supreme Court, but only to cases in the Circuit and District Courts. The Argo, 2 Wheat. 287; 4 Cond. Rep. 119.

Where there is an attorney on record, notice must in all cases be given to him. *Ibid.*

The deposition of a person residing out of the State, and more than one hundred miles from the place of trial, cannot be read in evidence. Bleeker v. Bond, 3 Wash. C. C. R. 529. *See* Buddicum v. Kirke, 3 Cranch, 293; 1 Cond. Rep. 535.

(b) It is a fatal objection to a deposition taken under the 30th section of the act of 1789, that it was opened out of court. Beale v. Thompson, 8 Cranch, 70; 3 Cond. Rep. 35.

(c) Since the act of March 3, 1803, chap. 40, in admiralty as well as in equity cases carried up to the

Act of March 3, 1803, ch. 40.

if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court which shall try the appeal, that the witnesses are then dead or gone out of the United States, or to a greater distance than as aforesaid from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity or imprisonment, they are unable to travel and appear at court, but not otherwise. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause. *Provided*, That nothing herein shall be construed to prevent any court of the United States from granting a *dedimus potestatem* to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice,(*a*) which power they shall severally possess, nor to extend to depositions taken in *perpetuam rei memoriam*, which if they relate to matters that may be cognizable in any court of the United States, a circuit court on application thereto made as a court of equity, may, according to the usages in chancery direct to be taken.

Depositions used in case of sickness, death, &c.

Dedimus potestatem as usual.

Executor or administrator may prosecute and defend.

SEC. 31. *And be it [further] enacted*, That where any suit shall be depending in any court of the United States, and either of the parties shall die before final judgment, the executor or administrator of such deceased party who was plaintiff, petitioner, or defendant, in case the cause of action doth by law survive, shall have full power to prosecute or defend any such suit or action until final judgment; and the defendant or defendants are hereby obliged to answer thereto accordingly; and the court before whom such cause may be depending, is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator having been duly served with a *scire facias* from the office of the clerk of the court where such suit is depending, twenty days beforehand, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit.(*b*) And the executor or administrator who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuance of the same until the next term of the said court. And if there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.(*c*)

Neglect of executor or administrator to become a party to the suit, judgment to be rendered.

Executor and administrator may have continuance.

Two plaintiffs. Surviving plaintiff may continue suit.

Supreme Court by appeal, the evidence goes with the cause, and it must consequently be in writing. 1 Gallis. C. C. R. 25; 1 Sumner's C. C. R. 328.

(*a*) When a foreign government refuses to suffer the commission to be executed within its jurisdiction, the Circuit Court may issue letters rogatory for the purpose of obtaining testimony according to the forms and practice of the civil law. Nelson et al. v. The United States, Peters' C. C. R. 255. See Buddicum v. Kirke, 3 Cranch, 293; 1 Cond. Rep. 535.

Depositions taken according to the proviso in the 30th section of the judiciary act of 1789, under a dedimus potestatem, according to common usage, when it may be necessary to prevent a failure or delay of justice, are, under no circumstances, to be considered as taken de bene esse. Sergeant's Lessee v. Biddle, 4 Wheat. 508; 4 Cond. Rep. 522.

(*b*) This statute embraces all cases of death before final judgment, and of course is more extensive than the 17 Car. 2, and 8 and 9 W. 3. The death may happen before or after plea pleaded, before or after issue joined, before or after verdict, or before or after interlocutory judgment; and in all these cases the proceedings are to be exactly as if the executor or administrator were a voluntary party to the suit. Hatch v. Eustis, 1 Gallis. C. C. R. 160.

(*c*) In real and personal actions at common law, the death of the parties before judgment abates the suit, and it requires the aid of some statutory provision to enable the suit to be prosecuted by or against the personal representatives of the deceased, where the cause of action survives. This is effected by the 31st section of the judiciary act of 1789, chap. 20. Green v. Watkins, 6 Wheat. 260; 5 Cond. Rep. 87.

In real actions the death of either party before judgment, abates the suit. The 31st section of the judiciary act of 1789, which enables the action to be prosecuted by or against the representatives of the

Writs shall not abate for defect of form.

Sec. 32. *And be it further enacted*, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially set down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe.(a)

Exceptions.

Courts may amend imperfections.

Criminals against U. S. arrested by any justice of the peace.

Act of March 2, 1793, ch. 22.

Act of July 16, 1794, ch. 83.

Sec. 33. *And be it further enacted*, That for any crime or offence against the United States, the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found agreeably to the usual mode of process against offenders in such state, and at the expense of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offence.(b) And copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case; which recognizances the magistrate before whom the examination shall be, may require on pain of imprisonment. And if such commitment of the offender, or the witnesses shall be in a district other than that in which the offence is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to issue, and of the marshal of the same district to execute, a warrant for the removal of the offender, and the witnesses, or either of them, as the case may be, to the district in which the trial is to be had. And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and the usages of law. And if a person committed by a justice of the supreme or a judge of a district court for an offence not punishable with death, shall afterwards procure bail, and there be no judge

Recognizance to be returned to the clerk's office.

Offender may be removed by warrant.

Bail admitted.

Bail, how taken.

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deceased, when the cause of action survives, is clearly confined to personal actions. Macker's heirs v. Thomas, 7 Wheat. 530; 5 Cond. Rep. 334.

(a) The 32d section of the act of 1789, allowing amendments, is sufficiently comprehensive to embrace causes of appellate as well as original jurisdiction; and there is nothing in the nature of an appellate jurisdiction, proceeding according to the common law, which forbids the granting of amendments. 1 Gallis. C. C. R. 22.

If the amendment is made in the Circuit Court, the cause is heard and adjudicated in that court, and upon appeal by the Supreme Court on the new allegation. But if the amendment is allowed by the Supreme Court, the cause is remanded to the Circuit Court, with directions to allow the amendment to be made. The Mariana Flora, 11 Wheat. 1; 6 Cond. Rep. 201.

By the provisions of the act of Congress a variance which is merely matter of form may be amended at any time. Scull v. Riddle, 2 Wash. C. C. R. 200. See Smith v. Jackson, 1 Paine's C. C. R. 486. Ex parte Bradstreet, 7 Peters, 634. Randolph v. Barrett, 16 Peters, 136. Hosey v. Buchanan, 18 Peters, 215. Woodward v. Brown, 13 Peters, 1.

(b) The Supreme Court of the United States has jurisdiction, under the constitution and laws of the United States, to bail a person committed for trial on a criminal charge by a district judge of the United States. The United States v. Hamilton, 3 Dall. 13.

The circumstances of the case must be very strong, which will, at any time, induce a court to admit a person to bail, who stands charged with high treason. The United States v. Stewart, 2 Dall. 345.

of the United States in the district to take the same, it may be taken by any judge of the supreme or superior court of law of such state.

Laws of States rules of decision.

Sec. 34. *And be it further enacted*, That the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.(a)

Parties may manage their own cause.

Sec. 35. *And be it further enacted*, That in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation for his

Attorney of the U. S. for each district.

His duties.

Compensation.

(a) The 34th section of the judiciary act of 1789, does not apply to the process and practice of the courts. It merely furnishes a decision, and is not intended to regulate the remedy. Wyman v. Southard, 10 Wheat. 1; 6 Cond. Rep. 1.

In construing the statutes of a State, infinite mischief would ensue, should the federal courts observe a different rule from that which has long been established in the State. M'Keen v. Delancy's lessee, 5 Cranch, 22; 2 Cond. Rep. 179.

In cases depending on the statutes of a State, and more especially in those respecting the titles to land, the federal courts adopt the construction of the State, where that construction is settled or can be ascertained. Polk's Lessee v. Wendall, 9 Cranch, 87; 3 Cond. Rep. 286.

The Supreme Court uniformly acts under a desire to conform its decisions to the State courts on their local law. Mutual Assurance Society v. Watts, 1 Wheat. 279; 3 Cond. Rep. 570.

The Supreme Court holds in the highest respect, decisions of State Courts upon local laws, forming rules of property. Shipp et al. v. Miller's heirs, 2 Wheat. 316; 4 Cond. Rep. 132.

When the construction of the statute of the State relates to real property, and has been settled by any judicial decision of the State where the land lies, the Supreme Court, upon the principles uniformly adopted by it, would recognize the decision as part of the local law. Gardner v. Collins, 2 Peters, 58.

In construing local statutes respecting real property, the courts of the Union are governed by the decisions of State tribunals. Thatcher et al. v. Powell, 6 Wheat. 119; 5 Cond. Rep. 28.

The courts of the United States, in cases depending on the laws of a particular State, will in general adopt the construction given by the courts of the State, to those laws. Elmendorf v. Taylor, 10 Wheat. 152; 6 Cond. Rep. 47.

Under the 34th section of the judiciary act of 1789, the acts of limitation of the several States where no special provision has been made by Congress, form rules of the decision in the courts of the United States; and the same effect is given to them as is given in the State courts. M'Cluny v. Silliman, 3 Peters, 277.

The statute laws of the States must furnish the rules of decision to the federal courts, as far as they comport with the laws of the United States, in all cases arising within the respective States; and a fixed and received construction of these respective statute laws in their own courts, makes a part of such statute law. Shelby et al. v. Guy, 11 Wheat. 361; 6 Cond. Rep. 345.

The Supreme Court adopts the local law of real property as ascertained by the decisions of State courts; whether those decisions are grounded on the construction of the statutes of the State, or from a part of the unwritten law of the State, which has become a fixed rule of property. Jackson v. Chew, 12 Wheat. 153; 6 Cond. Rep. 489.

Soon after the decision of a case in the Circuit Court for the district of Virginia, a case was decided in the court of appeals of the State, on which the question on the execution laws of Virginia was elaborately argued, and deliberately decided. The Supreme Court, according to its uniform course, adopts the construction of the act, which is made by the highest court of the State. The United States v. Morrison, 4 Peters, 124.

The Supreme Court has uniformly adopted the decisions of the State tribunals, respectively, in all cases where the decision of a State court has become a rule of property. Green v. Neal, 6 Peters, 291.

In all cases arising under the constitution and laws of the United States, the Supreme Court may exercise a revising power, and its decisions are final and obligatory on all other tribunals, State as well as federal. A State tribunal has a right to examine any such questions, and to determine thereon, but its decisions must conform to those of the Supreme Court, or the corrective power of that court may be exercised. But the case is very different when the question arises under a local law. The decision of the question by the highest tribunal of a State, should be considered as final by the Supreme Court; not because the State tribunal has power, in such a case, to bind the Supreme Court, but because, in the language of the court in Shelby v. Guy, 11 Wheat. 361, a fixed and received construction by a State, in its own courts, makes a part of the statute law. *Ibid.* See also Smith v. Clapp, 15 Peters, 125. Watkins v. Holman et al., 16 Peters, 25. Long v. Palmer, 16 Peters, 63. Golden v. Price, 3 Wash. C. C. R. 313. Campbell v. Claudius, Peters' C. C. R. 484. Henderson and Wife v. Griffin, 5 Peters, 151. Coates' executrix v. Muse's adm'or., 1 Brocken's C. C. R. 539. Parsons v. Bedford et al., 3 Peters, 433.

services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.(a)

Approved, September 24, 1789.

Attorney General of the U. S.

Duties.

Act of May 29, 1830, ch. 153.

Compensation.

Statute I.

Sept. 29, 1789.

Chap. XXI.—*An Act to regulate Processes in the Courts of the United States.*

Act of May 26, 1790. Obsolete.

Act of February 18, 1791. Repealed.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all writs and processes issuing from a supreme or a circuit court shall bear test of the chief justice of the supreme court, and if from a district court, shall bear test of the judge of such court, and shall be under the seal of the court from whence they issue; and signed by the clerk thereof. The seals of the supreme and circuit courts to be provided by the supreme court, and of the district courts, by the respective judges of the same.

Writs to bear test of the Chief Justice.

To be under the seal of the Court from which they issue.

Sec. 2. *And be it further enacted*, That until further provision shall be made, and except where by this act or other statutes of the United States is otherwise provided, the forms of writs and executions, except their style, and modes of process and rates of fees, except fees to judges, in the circuit and district courts, in suits at common law, shall be the same in each state respectively as are now used or allowed in the supreme courts of the same.(b) And the forms and modes of proceedings in

Act of May 8, 1792.

Act of May 19, 1828.

Forms of writs and executions

(a) The acts relating to the compensation of the Attorney General of the United States are: Act of March 2, 1797; act of March 2, 1799, chap. 38; act of February 20, 1804, chap. 12; act of February 20, 1819, chap. 27; act of May 29, 1830, chap. 153, sec. 10.

(b) The 34th section of the judiciary act of 1789, authorizes the courts of the United States to issue writs of execution as well as other writs. Wayman v. Southard, 10 Wheat. 1; 6 Cond. Rep. 1.

Whenever, by the state laws in force in 1789, a capias might issue from a state court, the acts of 1789 and 1792, extending in terms to that species of writ, must be understood to have adopted its use permanently in the federal courts. Bank of the United States v. January, 10 Wheat. 66—in note.

The process act of 1792, chap. 36, is the law which regulates executions issuing from the courts of the United States, and it adopts the practice of the supreme courts of the States existing in 1789, as the rule for governing proceedings on such executions, subject to such alterations as the Supreme Court of the United States may make; but not subject to the alterations which have since taken place in the State laws and practice. Wayman v. Southard, 10 Wheat. 1; 6 Cond. Rep. 1.

At an early period after the organization of the federal courts, the rules of practice in the State courts, which were similar to the English practice, were adopted by the judges of the Circuit Court. A subsequent change in the practice of the State courts will not authorize a departure from the rules first adopted in the Circuit Court. 1 Peters' C. C. R. 1.

Whenever by the laws of the United States a defendant may be arrested, the process of arrest employed in the State may be adopted. Burr's trial, 431.

The process act of 1828 was passed shortly after the decision of the Supreme Court of the United States, in the case of Wayman v. Southard, and the Bank of the United States v. Halstead, and was intended as a legislative sanction of the opinions of the court in those cases. The power given to the courts of the United States to make rules and regulations on final process, so as to conform the same to the laws of the States on the same subject, extends to future legislation; and as well to the modes of proceeding on executions as to the forms of writs. Ross and King v. Duval et al., 13 Peters, 45.

The first judiciary act of 1789, chap. 20, does not contemplate compulsive process against any person, in any district, unless he be an inhabitant of, or found within the same district at the time of serving the writ. Picquet v. Swann, 5 Mason's C. C. R. 35.

Congress have by the constitution, exclusive authority to regulate proceedings in the courts of the United States, and the States have no authority to control those proceedings, except so far as the State process acts are adopted by Congress, or by the courts of the United States under the authority of Congress. Wayman v. Southard, 10 Wheat. 1; 6 Cond. Rep. 1.

The laws of the United States authorize the courts of the United States so to alter the form of process of execution used in the Supreme Court of the United States in 1789, as to subject to executions

14th Amend. 1868

CHAP. XXXI.—*An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication.* April 9, 1866.

Who are citizens of the United States,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

their rights and obligations

Penalty for depriving any person of any right protected by this act, by reason of color or race, &c.

SEC. 2. *And be it further enacted*, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

Courts of the United States to have jurisdiction of offences under this act.

SEC. 3. *And be it further enacted*, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court, against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses, or wrongs done or committed by virtue or under color of authority derived from this act or the act establishing a Bureau for the relief of Freedmen and Refugees, and all acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the "Act relating to habeas corpus and regulating judicial proceedings in certain cases," approved March three, eighteen hundred and sixty-three, and all acts amendatory thereof. The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offences against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of the cause, civil or criminal, is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said courts in the trial and disposition of such cause, and, if of a criminal nature, in the infliction of punishment on the party found guilty.

Suits commenced in State courts may be removed on defendant's motion.

1863, ch. 81. Vol. xii. p. 807.

1863, ch. 67. Vol. xii. p. 755.

Jurisdiction to be exercised according to the laws of the United States, or the common law, &c.

A2

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District attorneys, &c., to institute proceedings against all violating this act.

SEC. 4. *And be it further enacted*, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as by this act has cognizance of the offence. And with a view to affording reasonable protection to all persons in their constitutional rights of equality before the law, without distinction of race or color, or previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of the United States and the superior courts of the Territories of the United States, from time to time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act; and such commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this act, and the same duties with regard to offences created by this act, as they are authorized by law to exercise with regard to other offences against the laws of the United States.

Number of commissioners appointed by circuit and territorial courts to be increased; their authority.

Marshals, &c., to obey all precepts under this act.

Penalty for refusal, &c.

SEC. 5. *And be it further enacted*, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of the person upon whom the accused is alleged to have committed the offence. And the better to enable the said commissioners to execute their duties faithfully and efficiently, in conformity with the Constitution of the United States and the requirements of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; and the persons so appointed to execute any warrant or process as aforesaid shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the clause of the Constitution which prohibits slavery, in conformity with the provisions of this act; and said warrants shall run and be executed by said officers anywhere in the State or Territory within which they are issued.

Commissioners may appoint persons to execute warrants.

Authority of such persons.

Warrants to run where.

Penalty for obstructing process under this act;

for rescue, &c.;

for aiding to escape;

for harboring.

SEC. 6. *And be it further enacted*, That any person who shall knowingly and wilfully obstruct, hinder, or prevent any officer, or other person charged with the execution of any warrant or process issued under the provisions of this act, or any person or persons lawfully assisting him or them, from arresting any person for whose apprehension such warrant or process may have been issued, or shall rescue or attempt to rescue such person from the custody of the officer, other person or persons, or those lawfully assisting as aforesaid, when so arrested pursuant to the authority herein given and declared, or shall aid, abet, or assist any person so arrested as aforesaid, directly or indirectly, to escape from the custody of the officer or other person legally authorized as aforesaid, or shall harbor or conceal any person for whose arrest a warrant or process shall have been issued as aforesaid, so as to prevent his discovery and arrest after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which said offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States.

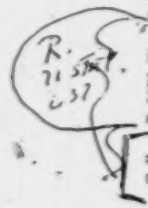
Fees of attorneys, commissioners, &c.;

SEC. 7. *And be it further enacted*, That the district attorneys, the marshals, their deputies, and the clerks of the said district and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, inclusive of all services incident to such arrest and examination. The person or persons authorized to execute the process to be issued by such commissioners for the arrest of offenders against the provisions of this act shall be entitled to a fee of five dollars for each person he or they may arrest and take before any such commissioner as aforesaid, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner, and in general for performing such other duties as may be required in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

to be paid from the State; recoverable of defendant on conviction.

Power to direct, &c., to attend, &c., for speedy arrest, &c., of persons charged with violation of this act.

SEC. 8. *And be it further enacted*, That whenever the President of the United States shall have reason to believe that offences have been or are likely to be committed against the provisions of this act within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and it shall be the duty of every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.



may employ the army and militia, &c.

SEC. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.

Appeal to the Supreme Court of the United States.

SEC. 10. *And be it further enacted*, That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate, *pro tempore*.

In the Senate of the United States, April 6, 1866.

Bill returned with the veto of the President.

The President of the United States having returned to the Senate, in which it originated, the bill entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," with his objections thereto, the Senate proceeded, in pursuance of the

Draw.

Lights, etc.

SEC. 5. That the draw provided for the bridge herein authorized to be constructed shall be opened promptly upon reasonable signal for the passing of boats; and said company or corporation shall maintain, at its own expense, from sunset till sunrise such lights or other signals on said bridge as the Light House Board shall prescribe.

Use by telephone and telegraph companies.

SEC. 6. That all telephone and telegraph companies shall be granted equal rights and privileges in the construction and operation of their lines across said bridge; and if actual construction of the bridge herein authorized shall not be commenced within one year from the passage of this act, and be completed within three years from the same date, the rights and privileges hereby granted shall cease and be determined.

Commencement and completion.

Use by railroad companies.

SEC. 7. That all railroad companies desiring the use of said bridge shall have and be entitled to equal rights and privileges relative to the passage of railway trains over the same, and over the approaches thereto, upon payment of a reasonable compensation for such use; and in case the owner or owners of said bridge and the several railroad companies, or any one of them, desiring such use, shall fail to agree upon the sum or sums to be paid, or upon rules and conditions for which each shall conform in using said bridge, all matters in controversy between them shall be decided by the Secretary of War, upon a hearing of the allegations and proofs of the parties.

Terms.

Joining with other companies authorized.

SEC. 8. That the said company may associate or join with themselves, in the construction, maintenance, and operation of said bridge, the Kansas City, Watkins and Gulf Railway Company, or any other railway company duly incorporated under the laws of the State of Louisiana.

Approved, March 2, 1891.

March 3, 1891.

CHAP. 517.—An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes.

Circuit Courts of Appeals.

Additional circuit judges to be appointed.

Qualifications, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, in each circuit an additional circuit judge, who shall have the same qualifications, and each shall have the same power and jurisdiction therein that the circuit judges of the United States, within their respective circuits, now have under existing laws, and who shall be entitled to the same compensation as the circuit judges of the United States in their respective circuits now have.

Circuit court of appeals established.

Composition.

Quorum.

Powers.

SEC. 2. That there is hereby created in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record with appellate jurisdiction, as is hereafter limited and established. Said court shall prescribe the form and style of its seal and the form of its writs and other process and procedure as may be conformable to the exercise of its jurisdiction as shall be conferred by law. It shall have the appointment of the marshal of the court with the same duties and powers under the regulations of the court as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable. The court shall also appoint a clerk, who shall perform and exercise the same duties and powers in regard to all matters within its jurisdiction as are now exercised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the marshal of the court shall be twenty-five hundred dollars a year, and the salary of the clerk of the court shall be three thousand dol-

Marshal.

Clerk.

Salaries.

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lars a year, to be paid in equal proportions quarterly. The costs and fees in the Supreme Court now provided for by law shall be costs and fees in the circuit courts of appeals; and the same shall be expended, accounted for, and paid for, and paid over to the Treasury Department of the United States in the same manner as is provided in respect of the costs and fees in the Supreme Court. Costs, etc.

The court shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law. Rules, etc.

SEC. 3. That the Chief-Justice and the associate justices of the Supreme Court assigned to each circuit, and the circuit judges within each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits in the manner hereinafter provided. In case the Chief-Justice or an associate justice of the Supreme Court should attend at any session of the circuit court of appeals he shall preside, and the circuit judges in attendance upon the court in the absence of the Chief-Justice or associate justice of the Supreme Court shall preside in the order of the seniority of their respective commissions. Constitution of court. Precedence.

In case the full court at any time shall not be made up by the attendance of the Chief-Justice or an associate justice of the Supreme Court and circuit judges, one or more district judges within the circuit shall be competent to sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court: *Provided*, That no justice or judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals. A term shall be held annually by the circuit court of appeals in the several judicial circuits at the following places: In the first circuit, in the city of Boston; in the second circuit, in the city of New York; in the third circuit, in the city of Philadelphia; in the fourth circuit, in the city of Richmond; in the fifth circuit, in the city of New Orleans; in the sixth circuit, in the city of Cincinnati; in the seventh circuit, in the city of Chicago; in the eighth circuit, in the city of Saint Louis; in the ninth circuit in the city of San Francisco; and in such other places in each of the above circuits as said court may from time to time designate. The first terms of said courts shall be held on the second Monday in January, eighteen hundred and ninety-one, and thereafter at such times as may be fixed by said courts. Service of district judges. Powers. No justice to sit on appeal from his court. Terms. Regular. Additional. First term. Post, p. 1115.

SEC. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals by writ of error otherwise, from said district courts shall only be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established, as is hereinafter provided, and the review, by appeal, by writ of error, or otherwise, from the existing circuit courts shall be had only in the Supreme Court of the United States or in the circuit courts of appeals hereby established according to the provisions of this act regulating the same. No appeal allowed from circuit to circuit courts. Appeals, etc., from district courts.

SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases: Appeals allowed to Supreme Court.

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision. Jurisdiction questioned.

From the final sentences and decrees in prize causes. Prize.

In cases of conviction of a capital or otherwise infamous crime. Capital crimes.

Constitutional questions.

In any case that involves the construction or application of the Constitution of the United States.

Construction of law, treaty, etc.

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

Conflict of laws.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Appeals from highest State court.

Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State, nor the construction of the statute providing for review of such cases.

Jurisdiction of court of appeals.

SEC. 6. That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different States; also in all cases arising under the patent laws, under the revenue laws, and under the criminal laws and in admiralty cases, excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision. And thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit courts of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

Judgments final.

Certificate for instruction.

Proceedings in Supreme Court.

Certiorari to Supreme Court.

And excepting also that in any such case as is hereinbefore made final in the circuit court of appeals it shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

Appeals and writs of error.

Limitation.

In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs. But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed.

Appeal in equity causes.

Proviso.

To be taken in 30 days.

SEC. 7. That where, upon a hearing in equity in a district court, or in an existing circuit court, an injunction shall be granted or continued by an interlocutory order or decree, in a cause in which an appeal from a final decree may be taken under the provisions of this act to the circuit court of appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction to the circuit court of appeals: *Provided*, That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court during the pendency of such appeal.

Expenses of attending judges.

SEC. 8. That any justice or judge, who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not

(d) Any claim for which a remedy is provided by sections 741–752, 781–790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1–31 of Title 50, Appendix. 50 U. S. C., Supp. I, app. § 4 *et seq.*

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

Chief judges.

SEC. 2. (a) The Chief Justices of the United States Court of Appeals for the District of Columbia, the District Court of the United States for the District of Columbia and the Court of Claims, and the presiding judge of the Court of Customs and Patent Appeals, in office on the effective date of this Act, shall be the chief judges of their respective courts.

Ante, p. 869.

(b) The provisions of title 28, Judiciary and Judicial Procedure, of the United States Code, set out in section 1 of this Act, with respect to the organization of each of the several courts therein provided for and of the Administrative Office of the United States Courts, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on the effective date of this Act, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of title 28, as set out in section 1 of this Act, pursuant to his prior appointment: *Provided, however*, That each circuit court of appeals shall, as in said title 28 set out, hereafter be known as a United States court of appeals. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of such courts on the effective date of this Act shall result from its enactment.

Continuance in office of judges, etc.

Salary of Assistant Director of Administrative Office of U. S. Courts.

(c) The sum of $7,500 specified in this Act as the salary which the Assistant Director of the Administrative Office of the United States Courts shall receive, and the sum of $7,500 specified in this Act as the salary which each commissioner whom the Court of Claims may appoint shall receive, shall each respectively be that basic compensation on which shall be computed and paid the additional basic compensation mentioned in section 521 of the Act of June 30, 1945 (ch. 212, 59 Stat. 301), as amended by the Act of May 24, 1946 (ch. 270, sec. 6, 60 Stat. 217).

5 U. S. C. §§ 934, 935.

(d) Anything in this Act to the contrary notwithstanding, the provisions of section 14 of the Act of July 1, 1944 (ch. 358, 58 Stat. 663), are not hereby repealed.

41 U. S. C. § 114.

Attorneys under authority of Department of Justice.

SEC. 3. Section 366 of the Revised Statutes (5 U. S. C., section 315), as amended, is amended to read as follows:

"SEC. 366. Every attorney specially retained under authority of

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TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 646, § 1, 62 Stat. 869.

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Enactment Into Law; Citation

Section 1 of act June 25, 1948, ch. 646, 62 Stat. 869, provided in part: "That title 28 of the United States Code, entitled 'Judicial Code and Judiciary' is hereby revised, codified, and enacted into law, and may be cited as 'Title 28, United States Code, section——.'"

Legislative Construction

Section 33 of act June 25, 1948, ch. 646, 62 Stat. 991, provided that: "No inference of a legislative construction is to be drawn by reason of the chapter in Title 28, Judiciary and Judicial Procedure, as set out in section 1 of this Act, in which any section is placed, nor by reason of the catchlines used in such title."

Separability of Provisions

Section 34 of act June 25, 1948, ch. 646, 62 Stat. 991, provided that: "If any part of Title 28, Judiciary and Judicial Procedure, as set out in section 1 of this Act, shall be held invalid, the remainder shall not be affected thereby."

Effective Date

Section 38 of act June 25, 1948, ch. 646, 62 Stat. 992, provided that: "The provisions of this Act shall take effect on September 1, 1948."

Repeals; Rights and Liabilities Saved

Section 39 of act June 25, 1948, ch. 646, 62 Stat. 992, repealed the sections or parts thereof of the Revised Statutes of the United States, Statutes at Large, or the Revised Statutes of the District of Columbia covering provisions codified in this title, but saved any rights or liabilities then existing under said sections or parts thereof.

R.S. § 1012 as affected by act Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167 (section 880 of former Title 28, Judicial Code and Judiciary), provided that appeals from district courts shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error. This provision was repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992. Section 2 of act Jan. 31, 1928, ch. 14, 45 Stat. 54, as amended Apr. 26, 1928, ch. 440, 45 Stat. 466; June 25, 1948, ch. 646, § 23, 62 Stat. 990 (section 861b of former Title 28, Judicial Code and Judiciary), provided that: "All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error."

Writs of Error

Act Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54 (section 861a of former Title 28, Judicial Code and Judiciary), provided that: "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore (Jan. 31, 1928) could be obtained by writ of error shall hereafter be obtainable by appeal." This provision was omitted from the 1948 Revised Judicial Code as obsolete, and repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992.

Title 28 as Continuation of Existing Law; Change of Name of Circuit Courts of Appeals

Section 2(b) of act June 25, 1948, ch. 646, 62 Stat. 985, provided that: "The provisions of Title 28, Judiciary and Judicial Procedure, of the United States Code, set out in section 1 of this Act, with respect to the organization of each of the several courts therein provided for and of the Administrative Office of the United States Courts, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on the effective date of this Act (Sept. 1, 1948), shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of title 28, as set out in section 1 of this Act, pursuant to his prior appointment: *Provided, however,* That each circuit court of appeals shall, as in said title 28 set out, hereafter be known as a United States court of appeals. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of such courts on the effective date of this Act shall result from its enactment."

Cross References

District of Columbia, organization of courts, see Title 11 of District of Columbia Code.

Territorial courts, see Title 48, Territories and Insular Possessions.

United States Tax Court, see section 7441 et seq. of Title 26, Internal Revenue Code.

PART I—ORGANIZATION OF COURTS

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CHAPTER 1—SUPREME COURT

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Allotment of Supreme Court Justices to circuits, see section 42 of this title.

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§ 106b. Amendments to Constitution

Whenever official notice is received at the General Services Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Administrator of General Services shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

(Added Oct. 31, 1951, ch. 655, § 2(b), 65 Stat. 710.)

SIMILAR PROVISIONS, REPEAL, SAVING CLAUSE, DELEGATION OF FUNCTIONS, TRANSFER OF PROPERTY AND PERSONNEL

Similar provisions were contained in R.S. § 205, 1950 Reorg. Plan No. 20, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1272. R.S. § 205 was repealed by section 56(b) of act Oct. 31, 1951. Subsec. (b) of section 56 provided that the repeal should not affect any rights or liabilities existing under the repealed statute on the effective date of the repeal (Oct. 31, 1951). For delegation of functions under the repealed statute, and transfer of records, property, personnel, and funds, see sections 3 and 4 of 1950 Reorg. Plan No. 20, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Publication of certificate in United States Statutes at Large, see section 112 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 112 of this title.

§ 107. Parchment or paper for printing enrolled bills or resolutions

Enrolled bills and resolutions of either House of Congress shall be printed on parchment or paper of suitable quality as shall be determined by the Joint Committee on Printing.

(July 30, 1947, ch. 388, 61 Stat. 635.)

§ 108. Repeal of repealing act

Whenever an Act is repealed, which repealed a former Act, such former Act shall not thereby be revived, unless it shall be expressly so provided.

(July 30, 1947, ch. 388, 61 Stat. 635.)

§ 109. Repeal of statutes as affecting existing liabilities

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

(July 30, 1947, ch. 388, 61 Stat. 635.)

§ 110. Saving clause of Revised Statutes

All acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in the Revised Statutes and covered by the repeal contained therein, shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

(July 30, 1947, ch. 388, 61 Stat. 635.)

§ 111. Repeals as evidence of prior effectiveness

No inference shall be raised by the enactment of the Act of March 3, 1933 (ch. 202, 47 Stat. 1431), that the sections of the Revised Statutes repealed by such Act were in force or effect at the time of such enactment: *Provided, however,* That any rights or liabilities existing under such repealed sections shall not be affected by their repeal.

(July 30, 1947, ch. 388, 61 Stat. 635.)

REFERENCES IN TEXT

Act of March 3, 1933 (ch. 202, 47 Stat. 1431), referred to in text, sections 2 and 3 of which were formerly set out as sections 60 and 29b of this title, respectively, was repealed by section 2 of act July 30, 1947.

§ 112. Statutes at Large; contents; admissibility in evidence

The Administrator of General Services shall cause to be compiled, edited, indexed, and published, the United States Statutes at Large, which shall contain all the laws and concurrent resolutions enacted during each regular session of Congress, all proclamations by the President in the numbered series issued since the date of the adjournment of the regular session of Congress next preceding, and also any amendments to the Constitution of the United States proposed or ratified pursuant to article V thereof since that date, together with the certificate of the Administrator of General Services issued in compliance with the provision contained in section 106b of this title. In the event of an extra session of Congress, the Administrator of General Services shall cause all the laws and concurrent resolutions enacted during said extra session to be consolidated with, and published as part of, the contents of the volume for the next regular session. The United States Statutes at Large shall be legal evidence of laws, concurrent resolutions, treaties, international agreements other than treaties, proclamations by the President, and proposed or ratified amendments to the Constitution of the United States therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

(July 30, 1947, ch. 388, 61 Stat. 636; Sept. 23, 1950, ch. 1001, § 1, 64 Stat. 979; Oct. 31, 1951, ch. 655, § 3, 65 Stat. 710.)

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